PROGRESS MADE IN THE IMPLEMENTATION OF THE DECLARATION ON APARTHEID AND ITS DESTRUCTIVE CONSEQUENCES IN SOUTHERN AFRICA

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SECOND REPORT OF THE SECRETARY-GENERAL (A/45/1052)

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INTRODUCTION

1. At its resumed forty-fourth session, held between 12 and 14 September 1990, the General Assembly considered the report of the Secretary-General (A/44/960 and Add.1-2), which had been requested by it in its Declaration on Apartheid and its Destructive Consequences in Southern Africa (annex to resolution S-16/1 of 14 December 1989). That report included the findings of the mission dispatched to South Africa by the Secretary-General to obtain firsthand information on the latest developments in the country.

2. Taking careful note of the report of the Secretary-General, the General Assembly adopted by consensus, on 17 September 1990, resolution 44/244 on the policies of apartheid of the Government of South Africa. In paragraph 10 of the resolution, the General Assembly requested the Secretary-General to remain actively seized of developments in South Africa and to submit to the forty-fifth session of the General Assembly a report on further progress made in the implementation of the Declaration. The present report is submitted in compliance with that request.

3. To prepare the report, the Secretariat sought the views of the Government, all political parties, movements and organizations, as well as several other interlocutors whom the United Nations team met in South Africa in June 1990. They were requested to transmit by 15 August 1991 their views on the overall situation in South Africa and on any progress achieved in the implementation of the Declaration. An analysis, based primarily on those views, is contained in annex I to the present report.

4. The Secretary-General had the opportunity, on a number of occasions during the year, of discussing with the Permanent Representative of South Africa to the United Nations developments relating to the situation in South Africa, in particular, initiatives and measures undertaken by the Government. The Secretary-General also met with the President of the African National Congress (ANC), Mr. Nelson Mandela, and the President of the Pan Africanist Congress of Azania (PAC), Mr. Clarence Makwetu, who provided him with an assessment of the situation and the position of their movements on some of the changes covered by the Declaration.

5. In addition, the Secretary-General drew certain provisions of the resolution to the attention of the United Nations organs and specialized agencies concerned, in particular the Office of the United Nations High Commissioner for Refugees (UNHCR). Details on the steps taken to implement such provisions will be reported to the General Assembly.

II OBSERVATIONS BY THE SECRETARY-GENERAL

6. Over the last 12 months the process towards the end of apartheid in South Africa, although halting, remained on course. A most notable development was the repeal of major apartheid legal structures. Regrettably, the wave of violence that engulfed the country during the period became a severe test of confidence and a serious obstacle to the evolving political dialogue. As several measures necessary for a climate for negotiations as well as peace initiatives have been undertaken recently, South Africa appears to be moving ahead again towards the beginning of substantive negotiations.

7. The complex process of change in which South Africa is presently engaged inevitably gives rise to reaction and political antagonisms. Such reaction has been manifest in a variety of ways, from violent acts by those opposing the democratic transformation of the country or wishing to obtain political advantage prior to negotiations to less overt activities by elements connected with the system. In this respect, the impartiality of the security forces has been called into question and the potential for destabilization by extremist groups remains a cause for concern.

8. While the most basic laws of apartheid, as promised, were removed by last June, many of the concomitant attitudes and practices, as indeed the consequences of those laws, do persist. Delays in the implementation of the necessary measures envisaged by the Declaration to create a climate for negotiations, particularly with regard to political prisoners and exiles, the perceived ineffectual response to violence and disclosures of secret funding of organizations led to tensions and a crisis of confidence in the government structures.

9. Yet a number of initiatives taken in the recent period, specifically to deal with violence, hold the promise that the momentum that started more than a year ago could regain strength. It is hoped that in the next few months, following the outcome of the peace initiative sponsored by religious and business leaders, steps will be taken towards an agreement regarding the drafting of a new constitution and the establishment of transitional arrangements.

10. At the same time, this process may be relatively lengthy, and even vulnerable, and it may be affected by the magnitude of the socio-economic inequalities that persist in South Africa and the inadequacy of the measures taken so far to address them effectively. While the Government has introduced a number of positive measures, the problems facing the majority of South Africans are so vast that they require a comprehensive national programme of redress. The private sector would be required to play a more important role than it has until now. The serious socio-economic

cleavages and the persistent negative attitudes towards change will have to be overcome so that the conditions of life of the disadvantaged sectors can be perceptibly improved. Access to the media and a sustained effort aimed at informing the public about the effects of apartheid on the majority population might contribute to building a consensus on the need to address these problems as early as possible.

11. On the positive side, the broad consensus that human rights must be protected in a democratic South Africa is encouraging. In this connection, the ratification of the International Covenants on Human Rights would be a significant step.

12. There appears also to be a growing convergence of the views of the parties concerned on a number of basic principles of a new constitution. However, the mechanism to draft a new constitution and the necessary arrangements for the transition to a democratic order are still to be agreed upon. It is encouraging that proposals on these matters are being elaborated and that a widening range of South African leaders are realizing that there is no other realistic option than to gather together and negotiate on a democratic, non-racial future for their country.

13. A meeting of all parties concerned to discuss and agree on these matters, as foreseen in the Declaration, now appears to be at the top of the political agenda. Such a meeting could go a long way towards resolving outstanding issues regarding the atmosphere for negotiations and free political activity, and, by itself, could serve as a confidence-building measure. Certainly, there are eminent persons in the country who inspire general trust, for instance, from the religious, academic, labour and business sectors, who can play an important role in the transitional period.

14. The response of the international community needs to be finely tuned to this complex and delicate process. As the Declaration envisages, encouragement, pressure and assistance would need to be suitably applied as the process unfolds, bearing in mind that the ultimate objective is the establishment of a non-racial democracy in South Africa.

15. The United Nations system, in addition to its contribution in connection with the return of exiles, is preparing a concerted response to requests for assistance, particularly from disadvantaged sectors of the society. Furthermore, the Secretary-General stands ready, when requested by the South Africans themselves and the international community, to help in the promotion of the process and in the provision of assistance during the transitional period and beyond.

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PREFACE

1. To facilitate the measurement of progress towards the dismantlement of apartheid, the present report used as a starting-point the situation as it existed in South Atrica in June 1990.

2. In all areas, the report is based on the written submissions provided to the Secretariat by 30 August 1991 by the Government as well as by a number of political parties and movements and other concerned organizations.[1] In many cases, these submissions were supplemented by official statements and press releases. No attempt has been made to reconcile any conflicting information submitted to the Secretariat.

BACKGROUND

3. The present section contains a chronological review of major political developments in South Africa from mid-1990 until August 1991. Such information provides the context in which to assess the progress that has been made in the implementation of the provisions of the Declaration.

4. Since the visit of the United Nations team to South Africa in June 1990, the process of change in that country has made a perceptible although not steady progress towards negotiations on a new constitution. The process of creating a climate conducive to negotiations, outlined in the five steps stipulated by the Declaration, has had mixed results. A political space has opened in South Africa allowing previously banned organizations to engage in political activity. However, that activity has been considerably affected by the persisting political violence. National and local initiatives to end the violence have, until recently, achieved only limited success. Although the dismantlement of the apartheid system is under way with the repeal of the major legal pillars of apartheid, there is no unanimity on the most effective measures necessary to address the socio-economic inequalities. These issues notwithstanding, the focus has shifted to the structures in which constitutional negotiations will be conducted, namely, the mechanism to draw up a new constitution and the modalities necessary to effect the transition.

5. In that context, a series of developments in South Africa in 1990 and 1991 need to be highlighted. It may be recalled that in May 1990, the Government and ANC adopted the Groote Schuur Minute, which, among other things, addressed the issues of the release of political prisoners and the granting of immunity for political offences. Subsequently, in August 1990, both parties adopted the Pretoria Minute, according to which the Government undertook to review emergency and security matters, while ANC suspended armed actions.

6. Signalling the spread of violence from the province of Natal to other areas of the country, at least 30 persons were killed on 22 July 1990 at Sebokeng, Transvaal province.

7. In October 1990, a major pillar of apartheid was removed when the Discriminatory Legislation Regarding Public Amenities Repeal Act came into effect. Meanwhile, the state of emergency was lifted in the province of Natal, while the National Party opened its ranks to all races.

8. In November 1990, the National Conference of Church Leaders in South Africa adopted the Rustenburg Declaration in which they stated their "unequivocal

rejection of apartheid as a sin" and the need for restitution to the victims of apartheid.

9. In December 1990, PAC held its first national conference in South Africa since 1959. It called for a constituent assembly to devise a new constitution and for the creation of a climate conducive to negotiations. In the same month, ANC held a national consultative conference, which concluded that internal and external pressure needed to be maintained on South Africa until a new constitution was adopted. The conference decided that ANC would suspend the entire negotiation process if all obstacles, including the violence, were not removed by 30 April 1991. The Azanian Peoples' Organization (AZAPO) also held its congress in December.

10. As the violence reached serious proportions, ANC and the Inkatha Freedom Party (IFP) held a summit at Durban on 29 January 1991 to address the issue.

11. In a major undertaking, President F. W. de Klerk announced on 1 February 1991 that the basic laws of apartheid would be repealed during the current session of Parliament. He issued a Manifesto for the New South Africa, stating that the new nation should be based on justice.

12. On 14 February 1991, the Parliament adopted amendments to the Labour Relations Amendment Act, following tripartite negotiations involving the South African trade union movement, namely, the Congress of South African Trade Unions (COSATU) and the National Council of Trade Unions (NACTU), as well as the employers' organization, the South African Consultative Committee on Labour Affairs (SACCOLA), and the Government.

13. To stress its concern at the violence, on 5 April 1991 ANC addressed an open letter to President de Klerk calling on the Government to fulfil a series of demands by 9 May 1991 concerning political violence, and stating that otherwise ANC would suspend any further discussion or exchange with the Government. On 16 April, ANC and PAC agreed to convene a conference of patriotic forces, scheduled for September 1991, to seek the unity of all democratic forces in South Africa.

14. On 18 April 1991, the Government announced a 10-point plan to address the issue of political violence, including the convening of a conference on violence and intimidation and the establishment of a standing commission of inquiry into the prevention and ending of violence. Later, the Government banned the use of "traditional weapons" in designated "unrest areas".

15. On 18 May 1991, ANC stated that since the violence was a threat to negotiations, it would not involve itself in discussions with the Government on any constitutional issues. It expressed support for the initiative of religious leaders to convene a broad-based peace conference and announced a plan of mass action to back the demands of the open letter.

16. By 30 April 1991, many political prisoners remained in jail, leading more than 200 of them to undertake a hunger strike. Some were hospitalized as a result of the strike.

17. An open letter was sent by PAC, on 22 May 1991, in response to President de Klerk's invitation to the organization to attend the Conference on Violence. Underlining the fact that the ongoing violence had been "directed primarily at communities which are highly politicized", PAC pledged to work with other political organizations in a bid to end the violence.

18. The basic laws of apartheid were repealed on 5 June 1991, namely, the Black Land Act, No. 27, of 1913; the Development Trust and Land Act, No. 18, of 1936; the Group Areas Act, No. 36, of 1966; and the Black Communities Development Act, No. 4, of 1984. Measures required to address the inequalities created by such laws are under discussion. The Population Registration Act, No. 30, of 1950 was abrogated on 17 June 1991, although the population register will remain until a new constitution is adopted. On 21 June, the Internal Security Act, No. 74, of 1982 was amended.

19. The sixteenth conference of IFP, which was held in June 1991, re-elected Chief Mangosuthu Gatsha Buthelezi as President.

20. On 22 June 1991, religious leaders, in cooperation with business leaders, facilitated the convening of a peace summit, which included some of the major parties to the political violence. As a result, a preparatory committee, including the Government, ANC and IFP, was established for what became known as the National Peace Initiative.

21. ANC held its national conference in July 1991, during which resolutions were adopted on, *inter alia*, negotiations, foreign policy, strategy and tactics, and the issue of violence. The conference provided the ANC leadership with a mandate to pursue negotiations with the Government. Concerning foreign policy, ANC resolved that "sanctions must be used creatively in order to arrest the erosion that has occurred".

22. Later, in July, several government Ministers acknowledged that public funds had been used secretly to assist the activities of political organizations, in particular IFP and the IFP-aligned United Workers Union of South Africa (UWUSA). Widespread concerns were raised about the impact of this funding on such issues as political intolerance and violence in the country. Subsequently, the Government announced a set of measures in connection with the use of public funds to assist political organizations, including changes in the portfolios of several Ministers and the revision of legislation pertaining to the use of secret funds.

23. The Fourth National Congress of COSATU, which was also held in July, called for a summit of anti-apartheid organizations to press, through mass action, for the Government's resignation and the installation of an interim government in the light of the acknowledgment of the secret use of public funds.

24. The National Peace Initiative released a draft national peace accord on 14 August 1991, which provides for, *inter alia*, codes of conduct both for political parties and organizations and for the security forces, as well as a monitoring mechanism. After its consideration by political and other organizations, the draft accord will be submitted for adoption by a national convention scheduled to be held on 14 September 1991. The draft accord is regarded as a confidence-building measure both in helping to end the violence and in urging forward the process on negotiations.

25. On 16 August 1991, the Government and UNHCR agreed on a plan for the voluntary repatriation of an estimated 40,000 South African refugees and political exiles. The agreement formally establishes the first United Nations presence in South Africa.

26. The public debate on constitutional issues is acquiring momentum as political parties and movements have issued proposals concerning a new constitution for South Africa. In that context, the debate on these issues is no longer at an incipient stage, but rather it has become a dynamic process engaging a wide cross-section of South African political opinion.

27. Throughout 1990 and 1991, political parties and movements as well as concerned organizations have conducted mass campaigns to press for negotiations and a democratic constitution. While demanding the release of all political prisoners and the return of all exiles, they have also called for an elected constituent assembly that would draw up a new constitution. Recently, following acknowledgments by the Government of the secret funding of political organizations, demands for an interim government have increased.

28. A more detailed discussion of these issues, as well as the views of political parties and movements and other organizations on them, is presented below.

III PROGRESS MADE TOWARDS CREATING A CLIMATE OF NEGOTIATIONS

A) RELEASE OF ALL POLITICAL PRISONERS AND DETAINEES

29. In paragraph 6 (a) of the Declaration, the General Assembly calls on the South African Government to "release all political prisoners and detainees unconditionally and refrain from imposing any restrictions on them". Beginning in February 1990, steps were taken by the Government to release prisoners sentenced for membership in previously banned organizations, or for acts which were illegal because the organization was banned; the Government also lifted restrictions on previously released prisoners (see A/44/960, annex I, para. 42).

Definition of political offences

30. In the Groote Schuur Minute of 4 May 1990, the Government and ANC decided to establish a working group to make recommendations, *inter alia*, on a definition of political offences in the South African situation that would be applicable to those inside and outside South Africa, bearing in mind similar experiences in Namibia and elsewhere (see A/45/268). The working group in its 21 May 1990 report agreed on certain principles and factors to form the basis of guidelines to meet the South African situation. Two types of political offences were envisaged. Firstly, there were certain "purely" political offences, like treason, not involving a common or "ordinary" crime such as murder or assault; or the dissemination of subversive literature. Secondly, the report also recognized that in certain circumstances a "common" crime, even a serious one, such as murder, could be regarded as a political offence and seven principal factors were set out that were commonly taken into account in national courts in making such a determination. These factors related to the motive of the offences; the context in which the offence was committed; the nature of the political objective; the legal and factual nature of the offence, including its gravity; the object of the offence; the relationship between the offence and the political objective being pursued; and the question whether the act was committed in the execution of an order or with the approval of the organization, institution or body concerned (see annex).[2]

31. The Government and ANC, in the Pretoria Minute of 6 August 1990, accepted the working group's report and agreed on a timetable for the release of prisoners in various categories and set the latest date envisaged for the completion of the total task in terms of the Working Group's report at not later than 30 April 1991. A further working group was established to draw up a plan for the release of ANC-related prisoners. The Government reserved its right to talk to other organizations about their prisoners.[2]

32. In the Government *Gazette* of 7 November 1990, the Department of Justice, referring to the working group set up pursuant to the Groote Schuur Minute, published guidelines for defining political offences in South Africa, established the process of granting pardon and indemnity, and dealt with the issues of temporary immunity and entry into the Republic. The guidelines for defining political offences followed the seven factors set out in the report of the working group, as summarized above, but omitted the distinction between "purely" political offences and "ordinary" crimes, which, in accordance with the working group's report, could be considered political offences.[3] On 9 November 1990, a further Government Gazette spelt out the composition, powers and functions of the consultative bodies on indemnity; the final decision was left to the State President.[4]

33. During the first months of 1991, concern was expressed by ANC, the Political Prisoners Release Programme of the Lawyers for Human Rights and the Human Rights Commission in South Africa that the agreements of the Government regarding the release of political prisoners were not being fulfilled. As the 30 April target date neared, unreleased political prisoners began a hunger strike.

Release of prisoners

34. According to the Government, by 30 April 1991 only 1,102 applications for release had been received. At the request of the Government, the International Committee of the Red Cross (ICRC), between 6 and 21 May 1991, brought the release programme to the attention of each South African prisoner.[5] As a result, the Government received over 5,000 additional applications, mostly from prisoners serving sentences for common law crimes, several hundred of which merited consideration. The Government further reported receiving lists of political prisoners from the Human Rights Commission in South Africa (1,292 names) and ANC (462 names). According to the Government, 260 persons from the list submitted by the Human Rights Commission and 128 from the ANC list were in South African prisons, mostly for serious offences. (Lists with details of sentences and offences were annexed to the submission of the Government.)[5]

35. In its submission to the Secretariat, the Government stated that 1,145 prisoners claiming political status had been released. According to the Human Rights Commission, as at 31 May 1991, 1,013 political prisoners had been released.[6] In the Government's view all prisoners with a legitimate claim to political status within the meaning and spirit of the Groote Schuur and Pretoria Minutes had been released; a virtual general amnesty had been declared excluding only cases of murder, rape, robbery and aggravated assault.

36. The Government further reported on an agreement signed by its representatives and ANC on 30 June 1991 to the effect that finality in the process of the release of prisoners had been reached and that 15 July 1991 had been set as the deadline for new applications. The agreement noted that a large number of prisoners did not qualify for release according to the categories and guidelines, and in that regard the agreement took cognizance of government proposals for special remission of sentences. The following day special remission of sentences was granted to a broad spectrum of prisoners (whether they claimed to be political prisoners or not), excluding life sentences, sexual offenders and child abusers. The Government reported that a large number of persons who did not qualify for release as political

prisoners because of the gravity of their offences had benefited from this reduction of sentence.

37. A number of organizations transmitted to the Secretariat their views that political prisoners were still being held in detention in South Africa and they criticized the procedures and definitions used by the Government. At the end of July 1991, according to the Human Rights Commission, 946 known political prisoners were still being held; 3 began serving their sentences in July, 166 were held in the homeland of Bophuthatswana and 730 were classified as "unrest prisoners" having been sentenced for intimidation or public violence during mass community protests. In addition, 17 prisoners were under sentence of death for politically related reasons.[7]

38. ANC, PAC, the South African Council of Churches (SACC), the Human Rights Commission and others have criticized the apparent unilateral exclusion from release by the Government of prisoners held for violent crimes when the agreement of 21 May 1990 specifically provided that "ordinary" crimes, even murder, could be, under certain circumstances, considered political offences. ANC stated that the Government had narrowed the original guidelines on political prisoners, excluding the unrest-related prisoners, which was one of the major reasons for the difference in figures given by the Government and those of ANC and the Human Rights Commission.[8] Similarly, PAC stated that "not all political prisoners have been released" and that the Government "has given its own definition of political prisoners and . . . thousands . . . remain in prison as a result". Reference was made to some of the Sharpeville Six and Upington 14.[9] From the point of view of PAC, political prisoners were all those who engaged in the struggle against apartheid, including combatants imprisoned for guerrilla activities and those charged for public violence in furtherance of the struggle against apartheid.[10]

39. The method used by the Government in granting special remission of sentence to the general prison population, rather than dealing specifically with politically motivated crimes, was also criticized, among others, by the Human Rights Commission, since, although a substantial number of political prisoners were in fact freed, a large number of criminal prisoners were released unnecessarily.[10] In addition, the fact that decisions of granting political prisoner status were ultimately in the hands of the Government was criticized.[11] It was also felt that the Government could not avoid responsibility for the prisoners held in Bophuthatswana. In this regard, the Human Rights Commission argued that the "so-called independent State of Bophuthatswana, a 'country' composed of seven discrete pieces of land scattered over three different provinces of South Africa, is clearly the artificial creation of the apartheid government, which cannot avoid ultimate responsibility". In addition, the Commission pointed out that the prisoners had been arrested as a result of the intervention of South African armed forces.[6]

40. SACC stated that it was still engaged in making representations to the Government on the release of prisoners. It expressed its concern over the way in which the matter of the release had been handled and underlined the adverse psychological impact on the prisoners of the procrastination in their release.

41. While a large number of political prisoners have been released, there is no consensus at present on whether all such prisoners have been released. One of the causes of this problem may be found in a lack of communication and transparency with regard to individual cases. It has been suggested that a procedure, beginning with

the establishment and checking of one list of alleged political detainees, be agreed upon. Disputed cases, if any, could be referred to a panel of independent experts or possibly an independent jurist for fact finding and recommendations. Such a procedure might also be useful with regard to detentions under security legislation and new trials allegedly for political offences.

Return of exiles

42. The return of persons from exile and refugees has also been seen as an important element in creating conditions for negotiations. With regard to the question of indemnity and return of expatriates, the Government informed the Secretariat that, as at 19 August 1991, 7,246 applications for indemnity had been approved out of a total of 8,713 received, only 179 having been rejected. On 16 August 1991, after lengthy and detailed negotiations, the Government of South Africa and UNHCR initialled a Memorandum of Understanding on voluntary repatriation and reintegration of South African returnees. UNHCR was charged with organizing the repatriation operation, was authorized to open temporary offices in South Africa to assist in the process of repatriation and reintegration and will have free and unhindered access to the returnees in South Africa; the returnees themselves would enjoy complete freedom of movement.[12]

43. The Government in that Memorandum expressed its willingness, in the interest of the process of reconciliation and in order to expedite the rate of repatriation, to grant amnesty to returnees for political offences committed before 8 October 1990 and which qualify for indemnity in terms of the guidelines that were appended to the agreement. Decisions on granting amnesty were the responsibility of the Government, but it was agreed that, before finally refusing an application for indemnity, the Government would take into consideration the recommendations of existing advisory bodies to which UNHCR could make representation on behalf of returnees. Persons granted indemnity could then return, after clearance by the Government, without risk of arrest, detention, imprisonment or legal proceedings in respect of those offences. Procedures for readmission, reception and re-integration were also agreed upon.[13] It is expected that the Memorandum will be signed in the near future.[14]

44. UNHCR, in announcing the agreement for the safe and dignified return of the refugees and exiles, said that it marked the beginning of the end of a 30-year-long human tragedy and that for South Africa it was a giant step toward the construction of a society where all South Africans would enjoy basic human rights.[15] The Government for its part referred in its submission to the agreement as a significant event and expressed the hope that the implementation of the agreement would be characterized by a spirit of mutual trust and understanding.

B) LIFTING OF ALL BANS AND RESTRICTIONS ON ALL PROSCRIBED AND RESTRICTED ORGANIZATIONS AND PERSONS

45. In paragraph 6 (b) of the Declaration, the General Assembly calls on the Government to "lift all bans and restrictions on all proscribed and restricted organizations and persons". In July 1990 the United Nations team that visited South Africa reported to the Secretariat that all organizations and groups met by it in South Africa agreed that the lifting of the bans and restrictions had been the only precondition that had been fully met. Concern was expressed at that time by some organizations that, despite the removal of the bans, they were not able to organize freely (A/44/960, annex I, paras. 54 and 55).

46. In its submission for the present report, the Government stated that no organizations were at this time banned, proscribed or restricted and that no restrictions or conditions were being imposed on any persons released from prison or detention. It noted further that demonstrations and protest activities were fully tolerated subject only to normal regulations.

47. According to PAC, by imposing conditional indemnity on members of PAC and other organizations, the Government has not fulfilled the precondition of unbanning organizations and of lifting restrictions on persons. PAC stated that in December 1990 members of the external mission attending the PAC conference in South Africa had to leave the country under threat of arrest.[9]

C) REMOVAL OF ALL TROOPS FROM THE TOWNSHIPS

48. In paragraph 6 (c) of the Declaration, the General Assembly calls upon the Government to "remove all troops from the townships". According to the Government of South Africa, all troops have been withdrawn from the townships; they now may only be temporarily deployed at the request of the police authorities in certain areas where the police need assistance to maintain order and combat violence. The Government stated that although the Police Force was being strengthened by additional manpower and funds, the widespread incidence of violence in some areas still required the involvement of security forces over and above normal police contingents. As far as the impartiality of the security forces was concerned, steps were taken to redefine their role. The State President said on 30 July 1991:

On 10 January 1990, I, of my own accord, addressed about 800 senior police officers from all over the country. I spelt it out in no uncertain terms that it was their duty to be absolutely impartial; to refrain from any political involvement; to restrict themselves to combating crime and protecting the lives and property of all South Africans.

On 7 March 1990, I repeated the same exercise with the Defence Force in respect of the necessity of a new approach in view of the new circumstances.[5]

49. COSATU has observed that "apart from regular troops, special forces, including those involved in Angola and Namibia, have been stationed in the townships. These units have been deeply implicated in the atrocities which have been committed".[14] According to PAC, the Government "has sought to undermine the provisions of this clause by imposing violence on our communities to justify the deployment of troops".[9]

D) LIFTING OF THE STATE OF EMERGENCY AND THE REPEAL OF ALL LEGISLATION, SUCH AS THE INTERNAL SECURITY ACT, DESIGNED TO CIRCUMSCRIBE POLITICAL ACTIVITY

50. In paragraph 6 (d) of the Declaration, the General Assembly calls upon the Government to "end the state of emergency and repeal all legislation, such as the Internal Security Act, designed to circumscribe political activity". The Government informed the Secretariat in its submission that the last state of emergency, in Natal province, had been lifted on 18 October 1990 and that a bill had been passed in Parliament earlier in 1991 amending the Internal Security Act of 1982 in such a manner as to obviate any limitation on the democratic process.

51. With regard to the repeal of legislation, the Human Rights Commission said that certain provisions of the Internal Security Act had been amended and others left unchanged. Detention for interrogation (sect. 29) was now limited to 10 days, renewable by judicial decision and the provisions for long-term detention without trial (sects. 28 and 50A) had been repealed. Short-term preventative detention (sect. 50) for 14 days and witness detention (sect. 31) remain unchanged. Detention without trial was still possible in the "homelands" where the security legislation had not been modified and such detention was also possible in South Africa in unrest areas under the Public Safety Act of 1953, which had not been modified. Regarding banning and restriction of persons, the relevant sections (18-27) of the Internal Security Act had been repealed, thus withdrawing the powers of house arrest and internal banishment. Further, the provision on the listing of persons (sects. 16 and 17) had been repealed, thus ending the prohibition of listed persons from being quoted, holding parliamentary office and practising law. Changes had also been made to the Internal Security Act to eliminate a number of punishable offences, while other offences, such as attending illegal meetings, had been reformed.[15]

52. However, the Commission reported that under the unaltered Public Safety Act of 1953 states of emergency and unrest areas could be declared. No state of emergency had been in force since October 1990, when that in Natal was lifted. However, since August 1990 unrest areas had been declared in townships in Transvaal and the Western Cape on over 50 occasions, amounting to localized states of emergency. At the end of June 1991, 15 townships were still affected.[15] PAC reported that a number of Pretoria-Witwatersrand townships had been declared unrest areas in response to violence perpetrated by the Government.[9]

53. The Black Sash said that the new security act was much less harsh and, most importantly, it gave power to the courts instead of to the police. With regard to detention without trial, that organization stated its total opposition to all forms of detention without trial and pointed out that over the years a high proportion of deaths in detention had occurred within the first few days. Thus, for the Black Sash, the shorter period of detention provided for in the new act was no guarantee of a detainee's safety. The Black Sash, referring to information released by the Human Rights Commission, stated that six persons had died in detention in the period from June 1990 to June 1991 and that during the same period 782 persons had been detained under the different sections of the Internal Security Act as well as the state of emergency.[16]

E) CESSATION OF ALL POLITICAL TRIALS AND POLITICAL EXECUTIONS

54. In paragraph 6 (e) of the Declaration, the General Assembly calls on the Government to "cease all political trials and political executions". With regard to this issue, the Government referred to the information it supplied with regard to the question of the release of all political prisoners and detainees set out above (see paras. 29-44).

55. Political trials still continue under the Internal Security Act, other legislation and under common law, according to ANC, PAC, COSATU and the Human Rights Commission. The Commission reported that at the end of July 1991 138 trials (including 9 in the homeland of Bophuthatswana, and 1 in Transkei) involving 1,377 individuals were in progress and that only eight of the defendants had been granted indemnity.[7] According to COSATU, its attorneys alone had defended some 1,485 members and trade union officials involved in over 166 trials. Of these only 57 had been convicted. Further, according to COSATU, the arrest in July this year of workers protesting peacefully outside court against the harassment of COSATU leaders, including its General Secretary, had added over 140 more political trialists to the list.[14]

56. With regard to executions, the Human Rights Commission reported that while no executions had been carried out over the previous 18 months, death sentences were still being handed down and at the end of June 1991 327 persons were on death row, of whom 19 were considered political prisoners.[15] For its part, ANC criticized the decision of the Government to lift the moratorium on death sentences and urged that it be reinstated.[17]

OTHER ELEMENTS CONDUCIVE TO FREE POLITICAL DISCUSSION AND TO THE PROCESS OF NEGOTIATIONS

57. In paragraph 7 of the Declaration, the General Assembly lays down as one of the objectives the creation of the "necessary climate in which free political discussion can take place—an essential condition to ensure that the people themselves participate in the process of remaking their country". Three elements have been found to be directly related to the issue of free political discussion and activity: freedom from violence, freedom of assembly and freedom of the press (A/44/960, annex I, para. 87).

A) CREATION OF AN ATMOSPHERE FREE OF VIOLENCE

58. The linkage between an atmosphere free of violence and progress towards negotiations was recognized by the General Assembly in the Declaration, paragraph 8 of which called for negotiations "in an atmosphere which, by mutual agreement between the liberation movements and the South African regime, would be free of violence". The United Nations team that visited South Africa in June 1990 reported on certain types of violence, including violence related to activities by the police and security forces, attacks by hit squads against anti-apartheid activists, violence by vigilante groups and by the far right, violence between political organizations and violence related to the armed struggle. The violence in Natal was considered to be a combination of several of these types (A/44/960, annex I, para. 89).

Extent of the violence

59. The issue of violence, its detrimental effect on the negotiating process and the need to bring violence to an end were given considerable importance in the submissions received by the Secretariat. Statistical information on the number of deaths and injuries was submitted by several organizations. During the one-year period ending in June 1991, the Human Rights Commission recorded that 2,641 persons died and 4,085 were injured in vigilante-related incidents; 34 persons died and 42 were injured by assassination squads; and 29 persons died and 246 were injured as a result of right-wing violence.[5] SACC reported more than 4,000 deaths in Natal province alone up to May 1991.[7]

Causes of violence

60. According to the Government, violence over the last year was mainly of a political nature and, to a certain extent, a continuation of the violent conflict that had

earlier erupted in the province of Natal. Violence, the Government stated, had gained momentum from the political reforms and the preparations for negotiations, which inevitably led to some political posturing and positioning.[5]

61. Addressing the causes of violence, the Black Sash stated that the Government had been "singularly reluctant to act against right-wing commandos and against Inkatha", and had shown a "remarkable tolerance" of what some media called "Black on Black violence". That same organization referred to the "overwhelming circumstantial evidence of outbreaks of violence being orchestrated, of existing conflicts being used to exacerbate violence, of police partiality", and alleged that a programme of internal destabilization had been launched with the aim of weakening ANC. The Black Sash expressed particular concern at the emerging pattern of assassinations of middle-level ANC leadership and the apparent refusal of the Government to follow up leads vigorously and scrupulously. The Black Sash also referred to allegations of human rights violations in ANC camps outside the country and recommended that those allegations be confronted in the interests of ANC credibility as a major partner in a future government.[16]

62. COSATU reported that its monitoring of the violence led it to conclude that the violence was "not spontaneous and uncoordinated, but has been planned and orchestrated". Some of the features of the violence that led COSATU to this conclusion were the apparent precision with which the violence was switched on or off at critical times; the central role the security forces were playing in coordinating and facilitating the violence, both through overt and covert means; the systematic and large-scale way in which violence had been imported into areas that had been hitherto peaceful; and the failure of the authorities to take decisive action to stop the violence or bring the culprits to book, despite frequent and detailed information supplied to them.[14]

63. A number of organizations, including ANC, PAC, COSATU, SACC, the Human Rights Commission and the Black Sash, provided information on reports of secret support by the Government for IFP and its trade union (UWUSA), as well as the alleged involvement of the security forces in violence. In particular, ANC referred to the disclosures in July 1991 of the State sponsorship of Inkatha to serve as a force to counter the influence of ANC, and the involvement of the South African Defence Force, special forces and mercenaries in the perpetration of violence in the Pretoria-Witwatersrand area and some parts of Natal.[18] The view was expressed that such disclosures had created a serious moral crisis in the country and a widespread breakdown of trust in the Government; the capacity of the Government to be both a referee and a player in the process of negotiations was questioned.[19]

Initiatives against violence

64. During the first months of 1991, a number of initiatives were taken with regard to the violence. In January 1991 an agreement was signed by the leadership of ANC and IFP with regard to the violence. However, according to ANC, the violence increased and took on a more organized and systematic character. Faced with that development, ANC on 5 April 1991 addressed an open letter to the Government demanding that certain steps be taken to halt the violence by 9 May 1991, failing which ANC would suspend discussions and contacts with the Government.[20]

65. In this context, the Government stated in its submission that it "bears the final responsibility for the maintenance of law and order", and "accords the highest priority to the termination of violence and intimidation and their detrimental impact, not only socially but also on the negotiating process".

66. The Government described a series of measures it had taken to curb the violence, including an increase in the strength of the police force by 10,000 members and a calling up of reserve forces. Moreover, it had prohibited the carrying of spears and other dangerous implements in unrest areas, except during certain traditional cultural occasions when prior notice had to be given to the police. The Government gave assurances that the question of carrying arms in general was being re-examined. The Government also stated that it had taken initiatives on the political level to curb the violence, including a call for a tripartite meeting, the convocation on 24 and 25 May 1991 of a conference on violence and intimidation, the decision to establish a standing commission on violence and intimidation, and instructions to the security forces to act with complete impartiality.

67. In its submission, SACC reported that after the conference on violence and intimidation, which was not attended by all the major parties concerned, church and business leaders facilitated the convening of a peace summit on 22 June 1991, in which all significant political parties participated. The Peace Summit set up a preparatory committee for a national peace initiative, including the Government, ANC and IFP, which has since produced drafts on codes of conduct both for political parties and organizations, and for the security forces. A draft national peace accord incorporating these codes and including other elements such as an outline of measures to facilitate socio-economic reconstruction and development, provisions for a commission of inquiry, national peace secretariat, regional and local dispute-resolving committees, national peace committees and ways of enforcing the peace accord has been elaborated for discussion. This national peace accord is expected to be signed at a national peace convention on 14 September 1991. COSATU recommended that the international community monitor the implementation of the accord, once it is formally ratified, and actively work with the national peace committee, which will oversee implementation of the accord.[14]

68. In its observation regarding the peace summit, the Government stated that all participants agreed to work for peace in South Africa, to involve their members and supporters at all levels in such work, to work together and with others in joint initiatives for this purpose and to study and research the cause of violence, to expose without fear or favour the findings of such research and to propose action required to deal with such causes.[5]

B) FREEDOM OF ASSEMBLY AND FREEDOM OF THE PRESS

69. With regard to the issue of freedom of assembly, the Government stated that no organizations were at present banned, proscribed or restricted and that there were no restrictions on political activities in South Africa and that individuals and political parties might organize as they wished. It stated further that the right to freedom of speech and of organization had been consolidated by allowing protest marches to be held, subject only to reasonable measures of control, and that the Government had no double agenda and no strategy of disrupting its opponents. In his address

on 2 February 1991, the State President underlined the fact that the rights of freedom of assembly and political expression were fully enjoyed and exercised in South Africa.[7]

70. For its part, the Human Rights Commission stated in its submission that under the Internal Security Act and other legislation the Government had the legal authority to control public gatherings and pointed out that during May 1991 over 2,500 persons had been arrested for attending gatherings declared illegal. The Black Sash reported in its submission that there was clear evidence that extra-parliamentary groupings to the left of the Government were being hampered in their legitimate political operations; rallies, meetings and marches by ANC and COSATU, for example, had repeatedly been blocked or disrupted by police action.

71. COSATU provided information relating to restrictions on freedom of assembly and political activity. It reported in its submission that these restrictions were imposed through targeted violence against activists and their families. It said that attacks on its members had intensified, particularly in industrial areas and workplaces; workers were forced to show their membership cards and if they were not members of Inkatha/UWUSA, they were often assaulted. In addition, a number of COSATU members had been injured or killed in the previous two weeks.

72. In connection with freedom of the press, the Government reported that it had lifted the media emergency regulations previously imposed and it was envisaged that the freedom of the press would be protected in the proposed bill of rights to be entrenched in the constitution. In this regard, the Human Rights Commission reported that two sections of the Internal Security Act had been repealed, thus removing the powers to close down, suspend or ban newspapers or similar periodicals; however, the Commission said other laws were still in force that placed restrictions on the press.

MATTERS ENHANCING OR OBSTRUCTING THE PROCESS OF ENDING APARTHEID

A) REMOVAL OF THE PILLARS OF APARTHEID

73. Since June 1990, the Government has enacted important measures towards dismantling the basic laws of apartheid. In its submission for the present report, the Government indicated that "more than a hundred discriminatory laws and regulations were abolished over the past 12 months".[5] The most significant steps taken concern the repeal of the legislative pillars of apartheid. On 17 June 1991, President F. W. de Klerk, addressing the Parliament, said:

The year 1991 will become known in history as the year in which South Africa finally removed statutory discrimination—apartheid—from its system. Now it belongs to history. The votes that have just taken place, and those of the preceding weeks, have finally brought to an end an era in which the life of every South African was affected in the minutest detail by racially based legislation. Now everybody is free of it . . . Statutory racial discrimination has been honestly and totally removed.[5]

74. The Discriminatory Legislation Regarding Public Amenities Repeal Act, No. 100, of 1990 came into effect on 15 October 1990. This Act abrogated the major legislation allowing for social segregation in public facilities, namely, the Reservation of Separate Amenities Act, together with the provisions of a number of different laws (such as section 1 (i) of the Road Transportation Act of 1977, which subjected the granting of road carrier permits to the condition that only persons of a certain racial group be transported).

75. In June 1991, the South African Parliament adopted the Abolition of Racially Based Land Measures Act, No. 108, of 1991, repealing the Group Areas Act, No. 36, of 1966, the Black Land Act, No. 27, of 1913, the Development Trust and Land Act, No. 18, of 1936, and the Black Communities Development Act, No. 4, of 1984, with effect on 30 June 1991. Also annulled were the Free Settlement Areas Act and the Local Government Affairs in Free Settlement Areas Act, both of 1988. It should be recalled that the Black Land Act and the Development Trust and Land Act, collectively known as the Land Acts, had established the principle of territorial segregation and confined 84 per cent of South Africa's population to 13 per cent of the land. In March 1991, the Government issued a White Paper on Land Reform, aimed at "making land more easily affordable and accessible to everybody".[5]

76. In June 1991, the Parliament also adopted the Population Registration Act Repeal Act, No. 114, of 1991, which repealed the Population Registration Act, No. 30,

of 1950. The new Act legally marked the end of race classification in South Africa and as such has an important symbolic value.

77. The Interim Measures for Local Government Act, also adopted in 1991, provides for local communities to negotiate their own models of joint local government. Accordingly, local communities (white towns and black townships) will, on a voluntary basis, be able to establish single administrations for the provision of services, hold joint meetings with the authorities to bind all participants and enter into agreements to unify the municipalities in whole or in part.

78. In its submission for the present report, the Government also mentioned a number of other laws passed by Parliament in 1991, notably the General Law Amendment Act, which eliminated racial restrictions in title deeds, the Mining Rights Amendment Act, which ended racial restrictions with regard to prospecting and mining rights and the Child Care Amendment Act, which enables parents to adopt children from other groups.

79. While most political parties, movements and other organizations concerned in South Africa have welcomed the repeal of the major apartheid laws, many consider that it will have only a limited impact on the daily lives of the majority of South Africans. According to the Black Sash, for instance, "it is becoming increasingly clear that, while the legal pillars of apartheid have been removed, the practices of apartheid are very much in place".[16]

80. The Black Sash underlined, in particular, that the Population Registration Act Repeal Act allows the retention of the population register until the Republic of South Africa Constitution Act of 1983 is abrogated, and that, at this time, issues such as social pensions and education are still administered on an "own affairs" basis.[16] According to the Democratic Party, "the Government is aware of the duplication and fragmentation caused by the application of the concept of own affairs, and is obviously taking steps to move away from it".[21] ANC has condemned as "totally unacceptable" the retention of the population register,[22] while PAC has stated that the Government has "only tinkered with the obnoxious Population Registration Act".[23]

81. Commenting on the lack of specific legislation outlawing the segregation of facilities by municipalities, the Black Sash also indicated that "people not formerly admitted to 'white' facilities continue to be excluded by tactics such as exorbitant entrance fees, high joining fees, privatization of facilities and in some cases the closing of facilities".[16] Similarly, the Interim Measures for Local Government Act was criticized for allowing local government bodies controlled by the Conservative Party to maintain their present racially exclusive structure.

82. Many political parties, movements and other organizations consider that the Abolition of Racially Based Land Measures Act does not address the issue of restoration of land to the communities that were forcibly removed in terms of the Land Acts or of the Group Areas Act. In its response to the White Paper on Land Reform, ANC emphasized that "restoration of land to the victims of forced removal must form the underpinning of any credible land policy".[24] PAC has dismissed the repeal of the Land Acts as "meaningless".[25]

83. Responding to demands from various political organizations, the Government has added a section to the Abolition of Racially Based Land Measures Act to set up an advisory commission, to which the victims of removals can present claims for

compensation. However, many anti-apartheid organizations still criticize the Act for entrenching the current land ownership and occupation pattern.

84. The Black Sash, for instance, stated that "the new legislation, with its heavy emphasis on land as a resource for wealth creation and commercial exploitation, will do little to provide justice for those who have been totally excluded from access to land". Likewise, the Black Sash expressed fear that a chapter on "norms and standards in residential environments", incorporated in the Abolition of Racially Based Land Measures Act, "could be used to exclude Blacks from White areas". It added that, while Black South Africans are now legally able to buy properties and settle in formerly White residential areas, very few have the financial means to do so.[16]

85. On the other hand, in its submission for the present report, the Democratic Party, commenting on some parts of the new legislation, observed that "the Government has decided that the forcible removal of rural Black communities will no longer take place" and has "discarded any plans to promote the independence of the 'homelands'—thereby departing from one of the fundamental principles of the apartheid ideology". It added that "there is today no legal racial barriers to the occupation and ownership of land in South Africa".

B) SOCIO-ECONOMIC INEQUALITIES

86. In his report of 1990, the Secretary-General noted the "grave social injustices that have been inflicted by apartheid on the Black population" (A/44/960, para. 15).

87. Most political parties, movements and other organizations concerned agree that the mere repeal of basic apartheid laws will not significantly alleviate these injustices nor will they modify the main socio-economic features of South African society. The South African Chamber of Business (SACOB) wrote in September 1990:

Apartheid has been the cause of historical injustices and the redressing of these will require economic policies that go beyond the repealing of social laws and functional deregulation. This means that socio-economic infrastructure, particularly in the fields of housing and education, should receive the highest priority in future state expenditure programmes.[26]

88. The South African Government allocated 38.2 per cent of total budgetary expenditure for social spending in its 1991/92 budget (as compared to 36.5 the previous year), as well as R 3 billion to the Independent Development Trust for social upliftment programmes. ANC, however, criticized the budget for failing to achieve immediate racial parity on a number of social services and stated that "the inadequate social expenditure was not a result of insufficient overall revenue but rather reflected ongoing apartheid budget priorities".[27] COSATU has opposed the imposition of a new value added tax (VAT), saying that it would "place an enormous burden on working and poor people, whose resources are already stretched to breaking point".[14]

89. Political parties and movements, as well as such organizations as those representing the business community, warn that the persistent socio-economic inequalities, coupled with the rising expectations of the majority of the South African population, could make the social fabric of the country even more fragile and thus impede

the unfolding of the democratization process. SACOB underlined in its submission that "poverty stands in the way of democracy in South Africa. Therefore, concerted efforts will be needed to remove the most glaring areas of unequal opportunities and treatment as soon as possible". SACOB envisages a major role for the business community in this regard, and stresses that "a wider concern with socio-political change will necessitate a broadening of the objectives of business in a functional sense".

Labour

90. The situation in the field of labour remains a major source of concern for most political parties and organizations in South Africa, as unemployment continues to rise. According to SACOB, 6 million South Africans, or 43 per cent of the economically active population, are now unemployed.[26] Therefore, "it is a common cause between organized business and labour that a major restructuring of the South African economy is necessary". In its submission for the present report, COSATU stated that it is "pushing, as a matter of urgency, for negotiations with the state and employers on an economic reconstruction programme involving all parties". Such negotiations will "be aimed at, *inter alia*, job creation programmes and the provision of basic needs".

91. Significant progress was achieved during the period under review regarding the exercise of basic rights (such as collective bargaining, freedom of association and the right to withhold labour) by workers, as an agreement—known as the Laboria Minute—was reached in October 1990 between COSATU, NACTU, SACCOLA and the Government. The agreement cleared the way for the removal of several restrictive amendments to the Labour Relations Act, introduced in 1988, and for the adoption in February 1991 of the Labour Relations Amendment Act. COSATU welcomed the adoption of this Act as a "major victory for the trade union movement".[28] Amendments to the Basic Conditions of Employment Act and to the Employment Insurance Act, which were tabled in Parliament in June but will not be legislated until next year, provide for the extension of the ambit of these Acts to farm workers.[3] The Government has also requested the National Manpower Commission (NMC) to investigate the possibility of extending labour legislation to domestic workers.

92. COSATU, however, has criticized the Government for "failing to honour its commitment made in the Laboria Minute".[14] According to COSATU, while this Minute specified that basic rights should be extended to farm, domestic and public sector workers, the Government is procrastinating on the question, refusing for instance to extend the Wage Act to unprotected workers before 1996. COSATU also considers the fact that "various pieces of legislation have been introduced without consultation with the unions concerned" as contrary to the "spirit of the Laboria Minute". It indicates that while it has agreed to participate on an interim basis in NMC, the Government has "reneged" on its agreement to restructure that Commission. At the fourth national congress of COSATU, in July 1991, it was decided that COSATU would campaign for a moratorium on job retrenchments and for an end to the privatization or "commercialization" of public sector corporations.

Education

93. The persisting crisis in the field of education has led to a growing consensus in South Africa on the need for the establishment of a single non-discriminatory edu-

cation system. The discussion document on an education renewal strategy, released by the Government in June 1991, recommended a non-racial future education model and said that "justice in educational opportunities must be afforded".[28] The report added, however, that freedom of association must form the cornerstone of a new education model and that adequate allowance must be made for the accommodation of diversity such as language, religion or culture. ANC welcomed the decision to abandon race as a criterion in education, but warned that "the modified education system could be used to continue the perpetuation of privilege, exclusivity and separation under the guise of diversity and freedom of association".[29]

94. The Government, however, has indicated that education is to be administered on an "own affairs" basis until a new constitution is in place. In the meantime, it has approved three new models for White state schools, enabling them to admit pupils from other race groups provided that a minimum of 72 per cent of parents agree.[30] The decision to desegregate White state schools on a voluntary basis led to the opening of some 205 schools out of 2,000 White schools in January 1991.[31] Similarly, the Universities Amendment Act, which was adopted in April 1991 and ended racial quotas at universities, did not provide for the repeal of the entire Universities Act of 1955. The latter still allows the establishment of separate universities along racial lines, according to the South African Institute of Race Relations (SAIRR).[29]

95. The Government has pledged to reduce existing backlogs in Black education by increasing education spending, which now represents 22 per cent of total budgetary expenditure. It is also expected that a substantial portion of the R 2 billion allocated in 1990/91 to the Independent Development Trust will be spent on education projects.[31] In response to demands from the National Education Coordinating Committee (NECC), the Government recently agreed that education authorities may share unused or under-utilized facilities "whenever feasible". However, disputes continue over the occupation of empty schools, sometimes leading to violent clashes. ANC stressed that the measures taken so far addressed only partially the main aspects of the educational crisis described as being of "monumental proportions" and pointed at the persisting disparities between the funds spent by the Government on the education of each Black child and each White child.[32]

Land and housing issues

96. As mentioned above, the South African Parliament, by adopting the Abolition of Racially Based Land Measures Act, abrogated the Black Land Act of 1913 and the Development Trust and Land Act of 1936. Several organizations have pointed out that the new Act does not provide, however, for a clear programme of restitution to the victims of forced removals. The Government's White Paper on Land Reform described such a programme as "not feasible". The commission set up to investigate claims for restitution has advisory powers and is mandated to consider only reallocations of land still held by the State.

97. According to the Democratic Party, the Government realizes the need for land to be provided for Black agricultural settlement and has enacted measures for "Black farmers to have the same entrée to the services and finances as members of other communities".[21] ANC has criticized the Government for "explicitly refusing to deal with the landlessness and dispossession that is the direct legacy of apartheid" and

for failing to "consult the communities who have been the victims of land dispossession".[24]

98. The Upgrading of Land Tenure Rights Act, adopted in 1991, provides for the upgrading of lower-order land tenure rights to full ownership. ANC welcomed this "attempt to provide ownership rights to blacks who are presently tenants" as a "positive move". It considers that "land reform means land redistribution", and it has criticized the Government's policy for "codifying the present state of dispossession under the cover of free market proposals".[24] PAC, dismissing the importance of the new laws, stated that "only a democratic Constitution will ensure that the land is returned to its right owners".[33]

99. In its 1991/92 budget, the Government has allocated R 500 million to the National Housing Fund, for the purchase and servicing of land as well as general housing and infrastructure improvement projects. It has also indicated that between August 1990 and July 1991 the Independent Development Trust spent R 750 million on a capital subsidy scheme to assist 100,000 first-time buyers to acquire a serviced site.[5] According to the Democratic Party, "the Government has accepted the inevitability of Black urbanization and the need for providing sufficient land for Black housing", as well as the "need that alternative provision has to be made for the large and rapidly increasing squatter community".[21]

100. Calling for the adoption of more radical measures, several organizations and political parties have pointed out that "the vast majority of South Africans have been left so desperately poor that they have no financial means to purchase the property that may in the future be available to them".[34] They have also deplored the Government's recent decision to strengthen measures aimed at enforcing anti-squatter legislation.[35]

Health

101. Health care in South Africa, as highlighted in the first report of the Secretary-General (A/44/960 and Add.1-2), continues to be characterized by marked inequalities between the various racial groups, in terms of both Government spending and health indicators. The report of the Department of National Health on 1990 health trends expressed concern at the declining health of South Africans, reflected by, among other things, an increasing number of notified tuberculosis cases.[36] Most of the Black population still depend on the public sector for its health care, as only 5 or 6 per cent of Blacks (as compared to 70 per cent of the White population) are covered by the Medical Aid system of private insurance.[26]

102. Measures announced in May 1990 by the Minister of National Health and Population Development for the opening of all hospitals to all races seem to have had a limited impact, and according to SAIRR "several hospitals remain segregated in practice".[29] The Government has indicated that the field of health also will continue to be regarded as an "own affair" until a new constitution is in place. SACOB underlined that "the fragmentation of health services on racial and other lines has been unsuccessful and prohibitively expensive and this cannot be further sustained or morally defended".[26]

103. In May 1991, the Government launched a national health plan for South Africa whereby academic hospitals will become autonomous bodies funded by the central Government, while the provision of primary health care will be devolved to local

authorities. Medical and other organizations concerned have welcomed this new emphasis on primary health care and the involvement of communities in the development of their own health services, but they stress that "talks and policy statements need to be transformed into actions".[26]

104. In its submission for the present report, SACOB outlined further actions that needed to be taken by the Government in the health sector and stressed in particular "the urgent need to disband all the different ministries of health and the 'own affairs' system in health care to create a unitary department of health". Noting that the Department of Health seems to be intent on privatization, SACOB warned that privatization of medical facilities on a wide scale "will lead to rapid decline in the quantity and quality of care in the public sector".

GUIDELINES TO THE PROCESS OF NEGOTIATIONS

105. The Declaration on Apartheid and its Destructive Consequences in Southern Africa set out, in paragraph 8, guidelines to the process of negotiations in South Africa. Stating "that the parties concerned should, in the context of the necessary climate, negotiate the future of their country and its people in good faith and in an atmosphere which, by mutual agreement between the liberation movements and the South African regime, would be free of violence", the Declaration considered that the process could begin based on agreements concerning: (a) the mechanism for the drawing up of a new constitution; (b) the role to be played by the international community in ensuring a successful transition to a democratic order; and (c) the necessary arrangements and modalities for the transition, which would include the holding of elections.

106. Disagreements notwithstanding concerning the appropriate climate for negotiations, a public debate has begun on the content of the negotiating process and on the mechanism as well as the necessary arrangements and modalities for the transition to a democratic society in South Africa. Some of the parties concerned have already proposed basic principles that should be included in a future constitution.

107. A convergence appears to be developing among the parties concerned with regard to these principles, basically, around those envisaged in the Declaration. Differences persist, however, regarding the mechanism to draft a new constitution and the transitional arrangements and modalities.

108. While the idea of a multi-party conference or an all-Party congress is gaining ground, for some it is seen as a first step towards agreeing on the forum to draft a new constitution, while for others it is seen as a constitution-making mechanism.

109. The idea of transitional arrangements seems to be generally accepted and various proposals on this issue range from the establishment of an interim government or a national unity government to giving a voice to non-parliamentary parties and organizations in important policy decisions during the period of transition.

110. At this stage, the process towards negotiations on a new constitution holds the promise that common ground may be reached on outstanding issues. In that context, the conference of patriotic forces, scheduled for September 1991, may become a step in this process. Along similar lines, the draft national peace accord, if effectively implemented, could lay a firm foundation on which peace and reconciliation in South Africa can be achieved. It is envisaged that the implementation of this accord will be based on consensus. SACC has expressed the hope that "the success of this process [peace accord] will open the way for the actual constitutional negoti-

ations". Finally, the parties concerned have not yet developed comprehensive proposals regarding the role to be played by the international community in ensuring a successful transition to a democratic order.

A) PRINCIPLES ENVISAGED IN A NEW CONSTITUTION

111. The Declaration outlined, in paragraph 3, a set of fundamental principles regarding this new constitutional order, among which were: (a) South Africa shall become a united, non-racial and democratic State; (b) all its people shall enjoy common citizenship and nationality, regardless of race, colour, sex or creed; (c) participation in the government and administration of the country shall be based on universal, equal suffrage, under a non-racial voters' roll and by secret ballot, in a united and non-fragmented South Africa. The principles also referred to such issues as freedom of association, the protection of human rights under an entrenched bill of rights, a legal system providing equal treatment for all as well as an independent and non-racial judiciary. Finally, the Declaration noted that the acceptance of these principles would enable South Africa to take its place among the world community of nations.

112. In his opening address to Parliament on 1 February 1991, State President F. W. de Klerk "put forward a 'Manifesto for the New South Africa' which may serve as a point of departure in the search for national consensus". The Manifesto declares a commitment to the creation of a free and democratic political system, in which all people shall be free; all people shall be equal before the law and shall enjoy equal rights regardless of race, colour, sex or creed. The right to freedom of expression, within the generally recognized bounds of responsibility, and the right to the freedom of movement and of association are also included in the Manifesto. While expressing a commitment to the elimination of "all discrimination between groups of people or between individuals" and to the repeal of "discriminatory legislation", the Manifesto states that "the rights of all individuals and minorities defined on a non-racial basis shall be adequately protected in the constitution and in a constitutionally guaranteed and justiciable bill of rights". The Manifesto also declares that "all the people of our land shall participate fully at all levels of government on the basis of universal, adult franchise".

113. At the conclusion of his address, President de Klerk said that the ideals expressed in the Manifesto could provide the cohesiveness of a new South African nation that would include all peace-loving South Africans on an equal footing. He added that this Manifesto could be associated with a bill of human rights, to which the Government was already committed, and could give direction to the constitutional negotiations that lay ahead.[3]

114. In its submission for the present report, the Government noted that on 2 February 1990, the State President said:

The Government accepts the principle of recognition and protection of the fundamental individual rights which form the constitutional basis of most Western democracies. We acknowledge, too, that the most practical way of protecting those rights is vested in a declaration of rights justiciable by an independent judiciary. However, it is clear that a system for the protection of rights of individuals, minorities and

national entities has to form a well-rounded and balanced whole. South Africa has its own national composition and its constitutional dispensation has to take this into account. The formal recognition of individual rights does not mean that the problems of a heterogeneous population will simply disappear. Any new constitution which disregards this reality will be inappropriate and even harmful.

Naturally, the protection of collective, minority and national rights may not bring about an imbalance in respect of individual rights. It is neither the Government's policy nor its intention that any group—in whichever way it may be defined—shall be favoured above or in relation to any of the others.[5]

115. In a discussion document circulated widely to its membership,[17] ANC put forward a set of principles that are quite similar to those stated in the Declaration. ANC envisages a united, democratic, non-racial and non-sexist South Africa, a unitary State where a bill of rights guarantees fundamental rights and freedoms for all on an equal basis, where South Africans live in an open and tolerant society, where the organs of government are representative, competent and fair in their functioning, and where opportunities are progressively and rapidly expanded to ensure that all may live under conditions of dignity and equality. ANC considers that government should reflect the will of the majority, be effective but not all powerful; it should operate within the framework of the constitution, acknowledging a separation of powers and the existence of fundamental rights and freedoms as guaranteed in a bill of rights.[17]

116. Another section of the ANC discussion document,[17] entitled "The Structure of a Constitution for a Democratic South Africa", gives commentary on such issues as those concerning the branches of government, the composition of the legislative branch, the judiciary and the administration of justice as well as elections. ANC has also circulated among its membership a draft bill of rights for a new South Africa, which embodies fundamental rights and freedoms.[18] The bill affirms the protection of civil, political and legal rights as well as social, economic and educational rights and provides for a minimum floor of enforceable statutory rights in relation to each area. The bill envisages the protection of language, cultural and religious rights. The principle of equal rights between men and women and workers' rights are also recognized in the bill.

117. In a statement issued on 2 August 1991, PAC emphasized its agreement with the fundamental principles outlined in the Declaration, the result of an international consensus to which PAC was a party. Furthermore, PAC stressed that its agreement reflected the principle that gave birth to the Congress 31 years ago, namely, "self-determination, non-racialism, the return of the land to the dispossessed and the creation of an Africanist socialist democracy with guarantees not for minorities but rather for human rights".[19]

118. Concerning a bill of rights, IFP has stated:

The new South Africa clearly needs a government that does not oppress the people and is recognizably respectful of individual rights . . . In other words, we require a bill of rights that stands above the executive and legislature, that cannot be suspended save in an emergency, that cannot be changed except by very strict procedures, and which is enforced by an independent judiciary.

Regarding the role of government, IFP believes that:

Government in the new South Africa should be stripped of the awesome powers that successive NP (National Party) Governments have built around prime ministers, state presidents and cabinets. This implies that regional government must be made a lot stronger, either in a unitary State or in one or another form of federal or other democratic State.[11]

119. In its submission for the present report,[12] COSATU noted that at its fourth annual congress, held in July 1991, it resolved, *inter alia*, to support the inclusion in a new constitution of a bill of rights, which should protect the rights of both individuals and organizations (collective rights). According to COSATU, the following worker rights should be included in such a constitution: union rights, including the right to strike; union independence from government, employers and political parties; democratic and accountable government, including a popular right to overturn laws in a referendum; a democratically planned economy, including provision for jobs, a living wage and greater worker and union participation in the workplace and economy; and equality between men and women, including practical steps to promote it.

120. It has been suggested that the early ratification of the International Covenants on Human Rights and their application in domestic law would help ensure respect for human rights during the transition period. A number of initiatives have been supported by the international community to foster a better understanding of these issues; among these was a seminar on human rights in constitutional law organized by the United Nations at Geneva in June 1991.

B) MECHANISM FOR THE DRAFTING OF A NEW CONSTITUTION

121. Regarding the mechanism to draw up a new constitution, the Government has proposed the convening of a multi-party conference "with the aim of setting in motion a process through which consensus in a future constitutional negotiating forum may be reached. The Government has stated that this conference could make decisions on its leadership, its rules of procedure, its agenda and any other matters deemed to be relevant to its mandate".[3] In a statement made on 30 July 1991, the State President concluded with an appeal to every leader to assist in the convening of the multi-party conference as soon as possible. "Let us begin real negotiations" the State President said.[5]

122. In the context of the process of negotiations, the then Deputy President of ANC, Mr. Nelson Mandela, called on 8 January 1991 for an all-party congress, which would be convened only after the removal of the obstacles to negotiations. The all-party congress would have to carry out three tasks: (a) to set out the broad principles within which the detailed constitutional work would be carried out; (b) to determine the make-up of the body, such as an elected constituent assembly, that would draw up the constitution; and (c) to establish an interim government to oversee the process of transition until a new parliament was elected, and a democratic government formed, on the basis of the new constitution.

123. At its forty-eighth National Conference, held in July 1991, ANC reaffirmed "the crucial importance of the following steps, which must be taken consequent to the

removal of ALL obstacles: (1) the convening of the all-party congress; (2) the installation of an interim government; (3) the election of a democratic constituent assembly, and (4) the adoption of a democratic constitution and the election of a parliament representative of all the people of South Africa."[41] The Conference further resolved that "these objectives should be achieved within a definite time-frame, to ensure that the process of negotiations is not drawn out". ANC has engaged in a campaign with other organizations to support the demand for a democratically elected constituent assembly on the basis of universal adult suffrage and one person one vote on a common voters' roll.[18]

124. In its submission for the present report,[9] PAC stated that at its conference in December 1990 it reiterated its call for a constituent assembly "as the only democratic mechanism of drawing a constitution of a democratic society and further called for a transitional mechanism involving the United Nations and the Organization of African Unity to ensure that the outcome of any process of transition is democratic and just". According to PAC, it has agreed with ANC to convene by the end of September 1991 a patriotic front of all democratic forces to discuss a transitional mechanism and the constituent assembly. To this end, both ANC and PAC are now engaged in a process of consultation with a wide spectrum of organizations. In its submission PAC stated that IFP was the only party that had rejected the call for a patriotic front.

125. In its submission,[42] the Solidarity Party stated that "it is likely that when the multi-party discussions commence in the near future, a joint declaration of principles will emanate [which will] endorse substantially the principles enunciated by the United Nations Declaration".

126. At its fourth annual congress, held in July 1991, COSATU supported the establishment of a broad patriotic front whose primary focus would be "to unite organizations of the oppressed and all those who support the call for a constituent assembly". The constituent assembly, which should be based on one person one vote on a common voters' roll, is regarded by COSATU as the central mechanism for drafting a new constitution.[14]

C) ARRANGEMENTS AND MODALITIES FOR THE TRANSITION TO A NEW DEMOCRATIC ORDER

127. The views of political parties, movements and concerned organizations on the arrangements and modalities range from the demand for the establishment of an interim government that would oversee the transition to the inclusion of non-parliamentary political parties in the present governmental administration of South Africa.

128. In its submission for the present report,[3] the Government stated that it had acknowledged the need to give non-parliamentary parties and organizations a voice in important policy decisions during the period of transition to a new constitution, without impairing orderly administration and good government in terms of the existing Constitution. The Government believes that the multi-party conference is the appropriate forum to discuss the best means of achieving this objective in regard to decisions at both the executive and legislative levels.

129. At his news conference on 30 July 1991, State President F. W. de Klerk expressed his commitment once again "to transitional arrangements which will ensure, in a constitutionally acceptable manner, that the Government is unable to misuse its po-

sition of power to the detriment of its discussion partners in the negotiating process. I have an open mind on alternative methods. However, any steps in this connection have to result from negotiation. As far as I am concerned, they may be the first item on the agenda".[5]

130. At its forty-eighth National Conference, held in July 1991, the then Deputy President of ANC, Mr. Nelson Mandela, stressed that it would be "incorrect and unacceptable" for the present Government to continue to govern the country on its own during the transition period since it is one of the partners to the negotiations.[43] In its submission, ANC pointed out that the task of the interim government would be to administer the transitional process to a democratically elected government.[38]

131. PAC has indicated that "it is willing to discuss the transitional arrangements and modalities in the process of drawing up a constitution at a bilateral and multilateral level with all key actors". According to PAC, these issues "will also be a subject of discussion at the patriotic front. The regime supported by IFP is contemplating being both a referee and a player. Recently, it has called on liberation movements to be its partners in the supervision of transition. PAC does not accept this. This is tantamount to being partners in apartheid".[9]

132. According to IFP, the future should be legislated into existence. IFP considers that the present Government, no matter how politically illegitimate, must remain until replaced in the next non-racial election. However, the Government cannot rule without taking into account the views of its present and future negotiating partners. The IFP leader, Chief Mangosuthu Gatsha Buthelezi, has said that:

South Africans do not want to leap into a constitutional vacuum; they want to move from the known to a clearly formulated next step in democratizing South Africa in an orderly and purposeful manner.[40]

133. COSATU, at its fourth National Congress, held in July 1991, resolved to campaign "for a sovereign interim government, consisting of representatives of major political parties, to administer the transition period and supervise the constituent assembly elections".[7]

134. In its submission,[7] SACC pointed out that the revelations concerning the secret use of public funds to support political organizations had led to a crisis of confidence on the bona fide of the Government. Expressing the concern that, at this juncture, "people have not only lost faith in the Government as such, but have lost confidence in the negotiation process", SACC has stressed the demand for an interim government or some other form of transitional administration that will remove power from the National Party as it is one of the players in the negotiations. It considers that the fulfilment of this demand is indispensable to the achievement of a speedy peaceful transition to a new non-racial democratic South Africa.

REVIEW OF THE IMPLEMENTATION OF THE PROGRAMME OF ACTION

135. By adopting the Declaration on Apartheid, Member States committed themselves to implementing the programme of action in the Declaration. This programme focused mainly on the following courses of action: (a) the international community was to remain seized of the issue of a political resolution of the South African question; (b) it was to step up all-round support for the opponents of apartheid; (c) it had to use concerted and effective measures aimed at applying pressure to bring a speedy end to apartheid and ensure that existing measures were not relaxed until there was clear evidence of profound and irreversible changes, bearing in mind the objectives of the Declaration.

136. In its resolutions 44/244 of 17 September 1990 and 45/176 A of 19 December 1990, subsequently adopted by consensus, the General Assembly called on the international community to adhere strictly to this programme of action.

137. Regarding the international community's sustained concern with the issue, the numerous statements and declarations issued by Governments, groups of countries and intergovernmental organizations since June 1990 attest to the fact that the international community has closely monitored events in South Africa during the period under review. While these countries and organizations have generally welcomed the steps taken by the South African Government towards the dismantling of apartheid, in particular the repeal of the basic laws of apartheid, they have also noted the shortcomings of such steps and expressed their concern about the violence affecting the country.

138. Thus, in a statement issued on 29 July 1991 at Kampala, the Organization of African Unity (OAU) Ad Hoc Committee of Heads of State and Government on Southern Africa, acknowledging that "significant developments had taken place" in South Africa, welcomed the repeal of apartheid legislation but emphasized that "the fundamental basis of apartheid, the undemocratic constitution, remains in place". Likewise, in a statement issued in London on 16 February 1991, the Commonwealth Committee of Foreign Ministers on Southern Africa (CFSA) welcomed the developments in South Africa and agreed that "these developments were a substantial progress on the situation" since May 1990. It noted, however, that "there had as yet been very little change on the ground". On 29 June 1991, the European Council "welcomed the important progress made towards the complete and irreversible abolition of apartheid", but noted that "obstacles remained on this path" and reiterated its concern about the violence. Similarly, in a statement issued on 23 March 1991, the Foreign

Ministers of the Nordic countries "noted with satisfaction that progress has continued in South Africa", but expressed concern at the "brutal and meaningless violence".

139. Regarding the undertaking of the international community to increase its support to the opponents of apartheid, most intergovernmental organizations have also pledged to provide increased assistance to the democratic forces and disadvantaged sections of the population in South Africa. For instance, the leaders of the Group of Seven nations stated on 16 July 1991 that "South Africa needed the help of the international community, especially in those areas where the majority have long suffered deprivation: education, health, housing and social welfare" and that they would "direct their aid for these purposes". Earlier, on 15 December 1990, the European Community, "with the objective of sending a clear signal of support to the victims of apartheid", had "agreed to strengthen the programme of positive measures and to adapt it to the requirements of the new situation, including requirements related to the return and resettlement of exiles". In February 1991, CFSA endorsed a programme of training for Black South Africans and underlined that "there was an urgent need to take action" in this field. CFSA also noted that "the training and rehabilitation of returning exiles merited particular attention".

140. Finally, regarding the maintenance of existing measures aimed at applying pressure to bring a speedy end to apartheid, divergences have emerged. In recent months, a number of Governments from various regions of the world have taken the view that developments in South Africa allow the establishment of diplomatic or trade contacts or the lifting of some of their restrictive measures. In this connection, in resolutions 44/244 and 45/176 A, the General Assembly expressed by consensus its "concern over any departures that have occurred from the international consensus reflected in the Declaration".

141. In response to these developments, the South African Government has stated that it can "look forward with greater confidence towards resuming its rightful position in the wider community of nations and restoring the many ties which were severed over the years".[11] ANC, on the other hand, views "the premature lifting of sanctions" as "regrettable" and believes that "sanctions should continue as a necessary form of pressure to encourage the regime to advance the process towards a negotiated resolution of the South African conflict".[10] PAC noted that it was "disturbed that Member States of the United Nations General Assembly who have adopted the Declaration are now acting in violation of this clause [para. 9 of sect. C, Programme of Action, of the Declaration]".[7] SACC, stating that "there is still need for pressure to be exerted on the Pretoria regime", urged the international community to "maintain the sanctions position until the change in South Africa is irreversible and profound".[7]

142. In its submission for the present report,[14] COSATU stated:

It is clear that the international community has an important role to play in this process. It is vital that the international community intensifies its monitoring of the negotiation process, and steps up its efforts to ensure that the perspective contained in the United Nations Declaration of a genuine negotiated settlement is asserted.

NOTES

1 By 30 August 1991, submissions were received by the Secretariat from the Government of South Africa and from the following political parties, movements and organizations:
- The African National Congress (ANC);
- The Black Sash;
- The Congress of South African Trade Unions (COSATU);
- The Democratic Party;
- The Human Rights Commission in South Africa;
- The International Committee of the Red Cross (ICRC);
- The Pan Africanist Congress of Azania (PAC);
- The Solidarity Party;
- The South African Chamber of Business (SACOB);
- The South African Council of Churches (SACC);
- The South African Institute of Race Relations (SAIRR).

2 Report of the working group annexed to the Pretoria Minute of 6 August 1991 (press release 16/90 of 7 August 1990 of the Permanent Mission of South Africa to the United Nations).

3 *Government Gazette* of 7 November 1990, No. 4584.

4 *Government Gazette* of 9 November 1990, No. 4588.

5 Submission of the Government of South Africa, dated 21 August 1991.

6 Human Rights Commission (South Africa), special briefing SB-1, 11 June 1991.

7 Submission of the South African Council of Churches, dated 27 August 1991.

8 Press release of the Observer Mission of the African National Congress to the United Nations.

9 Submission of the Pan Africanist Congress of Azania, dated 23 August 1991.

10 Human Rights Commission (South Africa), press releases of 17 July and 18 August 1991.

11 Human Rights Commission (South Africa), press release of 17 July 1991.

12 Memorandum of Understanding between the Government of the Republic of South Africa and the United Nations High Commissioner for Refugees on the Voluntary Repatriation and Reintegration of South African Returnees, dated 16 August 1991.

13 Press release of the United Nations High Commissioner for Refugees, dated 16 August 1991.

14 Submission of the Congress of South African Trade Unions, dated 28 August 1991.

15 Submission of the Human Rights Commission (South Africa), dated 7 August 1991.

16 Submission of the Black Sash, dated 19 August 1991.

17 Press release of the Observer Mission of the African National Congress of South Africa to the United Nations, dated 27 August 1990.

18 Submission of the African National Congress, dated 28 August 1991.

19 See for example the submission of the South African Council of Churches, dated 27 August 1991, and the submission of the Black Sash, dated 19 August 1991.

20 Open letter to State President de Klerk and his Cabinet from the National Executive Committee of the African National Congress, 5 April 1991.

21 Submission of the Democratic Party, dated 28 August 1991.

22 Press statement of the African National Congress on the Repeal of the Population Registration Act, 17 June 1991.

23 Media release of the Pan Africanist Congress of Azania, 17 July 1991.

24 Press statement of the African National Congress on the Government White Paper on Land Reform, 12 March 1991.

25 Press releases of the Pan Africanist Congress of Azania, 4 and 8 April 1991.

26 Submission of the South African Chamber of Business (SACOB), dated 7 August 1991.

27 *The Citizen* (Johannesburg), 21 March 1991.

28 Press release of the Congress of South African Trade Unions on the passage of the Labour Relations Amendment Bill, 14 February 1991.

29 Submission of the South African Institute of Race Relations, dated 23 August 1991.

30 *The Financial Times* (London), 31 January 1991.

31 Submission of the Government of South Africa, dated 21 August 1991, and *South African Barometer* (Johannesburg), 29 March 1991.

32 Nelson Mandela, message to the International Conference on the Educational Needs of the Victims of Apartheid in South Africa, 25 June 1991.

33 Press release of the Pan Africanist Congress of Azania, 4 April 1991.

34 Lawyers' Committee for Civil Rights Under Law, *South Africa in Transition, Update V*, 22 February 1991.

35 Press statement of the African National Congress on Pretoria's "declaration of war" against squatters, 10 June 1991.

36 *The Citizen* (Johannesburg), 14 May 1991.

37 African National Congress, discussion document, "Constitutional Principles and Structures for a Democratic South Africa".

38 African National Congress, "A Bill of Rights for a New South Africa", working document by the ANC Constitutional Committee (Bellville), 1990.

39 Press release of the Observer Mission of the Pan Africanist Congress of Azania to the United Nations, 2 August 1991.

40 *Leadership/The Watershed Years*, "No Pushover: An interview with Inkatha's Mangosuthu Buthelezi" (Johannesburg), 1991, and submission of the South African Institute of Race Relations, dated 23 August 1991.

41 Resolutions of the forty-eighth National Conference of the African National Congress, Durban, July 1991.

42 Submission of the Solidarity Party, dated 16 August 1991.

43 Statement of the Deputy President of the African National Congress, Nelson Mandela, at the opening of the ANC National Conference, Durban, 2-7 July 1991.

44 Address by President F. W. de Klerk at the opening of the third session of the Ninth Parliament, 1 February 1991.

ANNEX

EXCERPTS FROM THE REPORT OF THE WORKING GROUP ON POLITICAL OFFENCES DATED 21 MAY 1990

DEFINING POLITICAL OFFENCES IN THE SOUTH AFRICAN SITUATION

6.1 The following classes of persons, whether inside or outside South Africa, must be taken into account with regard to pardon or indemnity for political offences:

a) Persons already sentenced, including persons serving a sentence, persons subject to any suspended sentence, persons awaiting execution of a sentence or where the case is on appeal or review;

b) Persons who may be liable to prosecution, or who are awaiting or undergoing trial;

c) Persons in detention.

6.2 The power to pardon is vested in the State President by virtue of section 6 of the Republic of South Africa Constitution Act, 1983 (Act 110 of 1983), and section 69 of the Prisons Act, 1959, and will apply to persons already sentenced, i.e. class (a) above.

6.3 Special power to grant indemnity is required in regard to persons referred to in class (b) above. The relevant power is contained in section 2 of the Indemnity Act, 1990. Section 6 of the Criminal Procedure Act, 1977, provides for the stopping of a prosecution and may therefore be applied.

6.4 The recommendations contained in this document relate only to political offences and in no way imply any limitation upon the general exercise of the power mentioned in paragraphs 6.2 and 6.3.

6.5 In preparing for the making of "recommendations on a definition of political offences in the South African situation", the following principles and factors were noted (the principles and factors are largely those applied by Prof. Norgaard in the Namibian situation after study of the jurisprudence and the representations of the parties concerned and do not purport to be exhaustive):

6.5.1 There is no generally accepted definition of "political offence" or "political prisoner" in international law. What is generally accepted, however, is that principles developed in the field of extradition law are relevant in distinguishing between "political offences" and "common crimes".

6.5.2 The law and practice of States show that there is now a considerable degree of consensus both as to the types of offence which may in principle be classified as political as well as to the sort of factors which should be taken into account in deciding whether an offence is "political" or not. In particular, the following are aspects of the law and practice of extradition which appear to provide valuable guidance:

a) Whether or not an offence is political depends on the fact and circumstances of each individual case. The question is thus approached on a case-by-case basis.

b) Certain offences are recognized as "purely" political, e.g. treason directed solely against the State and not involving a common or "ordinary" crime such as murder or assault; or the dissemination of subversive literature.

c) In certain circumstances a "common" crime, even a serious one such as murder, may be regarded as a political offence. Here the following are principal factors which are commonly taken into account by national courts:

i) The motive of the offender—i.e. was it a political motive (e.g. to change the established order) or a personal motive (e.g. to settle a private grudge).

ii) The context in which the offence was committed, especially whether the offence was committed in the course of or as part of a political uprising or disturbance.

iii) The nature of the political objective (e.g. whether to force a change in policy or to overthrow the Government).

iv) The legal and factual nature of the offence, including its gravity (e.g. rape could never be regarded as a political offence).

v) The object of the offence (e.g. whether it was committed against government property or personnel or directed primarily against private property or individuals).

vi) The relationship between the offence and the political objective being pursued, e.g. the directness or proximity of the relationship, or the proportionality between the offence and the objective pursued.

vii) The question whether the act was committed in the execution of an order or with the approval of the organization, institution or body concerned.

6.6.1 The Working Group endorses the principles and factors set out in paragraph 6.5.2 and accepts that these will form the basis of guidelines to meet the South African situation when considering the grant of pardon or indemnity in respect of political offences.

6.6.2 As stated in the Groote Schuur Minute, it is understood that the Government may in its discretion consult other political parties and movements, and other relevant bodies with regard to the grant of pardon or indemnity in respect of offences relating to them. For this purpose it shall be free to formulate its own guidelines which it will apply in dealing with members of such organizations, groupings or institutions, governmental or otherwise, who committed offences on the assumption that a particular cause was being served or opposed.

ANNEX

DECLARATION ON APARTHEID AND ITS DESTRUCTIVE CONSEQUENCES IN SOUTHERN AFRICA

We, the States Members of the United Nations,

Assembled at the sixteenth special session of the General Assembly, a special session on apartheid and its destructive consequences in southern Africa, guided by the fundamental and universal principles enshrined in the Charter of the United Nations and the Universal Declaration of Human Rights, in the context of our efforts to establish peace throughout the world by ending all conflicts through negotiations, and desirous of making serious efforts to bring an end to the unacceptable situation prevailing in southern Africa, which is a result of the policies and practices of apartheid, through negotiations based on the principle of justice and peace for all;

Reaffirming our conviction, which history confirms, that where colonial and racial domination or apartheid exist, there can be neither peace nor justice,

Reiterating, accordingly, that while the apartheid system in South Africa persists, the peoples of Africa as a whole cannot achieve the fundamental objectives of justice, human dignity and peace which are both crucial in themselves and fundamental to the stability and development of the continent,

Recognizing that, with regard to southern Africa, the entire world is vitally interested that the processes in which that region is involved, leading to the genuine national independence of Namibia and peace in Angola and Mozambique, should succeed in the shortest possible time, and equally recognizing that the world is deeply concerned that destabilization by South Africa of the countries of the region, whether through direct aggression, sponsorship of surrogates, economic subversion or other means, is unacceptable in all its forms and must not occur,

Also recognizing the reality that permanent peace and stability in southern Africa can only be achieved when the system of apartheid in South Africa has been eradicated and South Africa has been transformed into a united, democratic and non-racial country, and therefore reiterating that all the necessary measures should be adopted now to bring a speedy end to the apartheid system in the interest of all the people of southern Africa, the continent and the world at large,

Believing that, as a result of the legitimate struggle of the South African people for the elimination of apartheid, and of international pressure against that system, as well as global efforts to resolve regional conflicts, possibilities exist for further movement towards the resolution of the problems facing the people of South Africa,

Reaffirming the right of all peoples, including the people of South Africa, to determine their own destiny and to work out for themselves the institutions and the system of government under which they will, by general consent, live and work together to build a harmonious society, and remaining committed to doing everything possible and necessary to assist the people of South Africa, in such ways as they may, through their genuine representatives, determine to achieve this objective,

Making these commitments because we believe that all people are equal and have equal rights to human dignity and respect, regardless of colour, race, sex or creed, that all men and women have the right and duty to participate in their own government, as equal members of society, and that no individual or group of individuals has any right to govern others without their democratic consent, and reiterating that the apartheid system violates all these fundamental and universal principles,

Affirming that apartheid, characterized as a crime against the conscience and dignity of mankind, is responsible for the death of countless numbers of people in South Africa, has sought to dehumanize entire peoples and has imposed a brutal war on the region of southern Africa, which has resulted in untold loss of life, destruction of property and massive displacement of innocent men, women and children and which is a scourge and affront to humanity that must be fought and eradicated in its totality,

Therefore we support and continue to support all those in South Africa who pursue this noble objective. We believe this to be our duty, carried out in the interest of all humanity.

While extending this support to those who strive for a non-racial and democratic society in South Africa, a point on which no compromise is possible, we have repeatedly expressed our objective of a solution arrived at by peaceful means; we note that the people of South Africa, and their liberation movements who felt compelled to take up arms, have also upheld their preference for this position for many decades and continue to do so,

Welcoming the Declaration of the Ad Hoc Committee of the Organization of African Unity on Southern Africa on the question of South Africa, adopted at Harare on 21 August 1989, and subsequently endorsed by the Heads of State or Government of Non-Aligned Countries at their Ninth Conference, held at Belgrade from 4 to 7 September 1989, as a reaffirmation of readiness to resolve the problems of South Africa through negotiations. The Declaration is consistent with the positions contained in the Lusaka Manifesto of two decades ago, in particular regarding the preference of the African people for peaceful change, and takes into account the changes that have taken place in southern Africa since then. The Declaration constitutes a new challenge to the Pretoria regime to join in the noble efforts to end the apartheid system, an objective to which the United Nations has always been committed,

Noting with appreciation that the Commonwealth Heads of Government, at their meeting held at Kuala Lumpur from 18 to 24 October 1989, noted with satisfaction the strong preference for the path of negotiated and peaceful settlement inherent in the Declaration adopted at Harare on 21 August 1989, and considered what further steps they might take to advance the prospects for negotiations,

Also noting with appreciation that the Third Francophone Conference of Heads of State and Government, held at Dakar from 24 to 26 May 1989, likewise called for negotiations between Pretoria and representatives of the majority of the people with a view to the establishment of a democratic and egalitarian system in South Africa,

Consequently, we shall continue to do everything in our power to increase support for the legitimate struggle of the South African people, including maintaining international pressure against the system of apartheid until that system is ended and South Africa is transformed into a united, democratic and non-racial country, with justice and security for all its citizens,

In keeping with this solemn resolve, and responding directly to the wishes of the majority of the people of South Africa, we publicly pledge ourselves to the positions contained hereunder, convinced that their implementation will lead to a speedy end of the apartheid system and heralding the dawn of a new era of peace for all the peoples of Africa, in a continent finally free from racism, white minority rule and colonial domination,

Declare as follows:

1. A conjuncture of circumstances exists, which, if there is a demonstrable readiness on the part of the South African régime to engage in negotiations genuinely and seriously, given the repeated expression of the majority of the people of South Africa of their long-standing preference to arrive at a political settlement, could create the possibility to end apartheid through negotiations.

2. We would therefore encourage the people of South Africa, as part of their legitimate struggle, to join together to negotiate an end to the apartheid system and agree on all the measures that are necessary to transform their country into a non-racial democracy. We support the position held by the majority of the people of South Africa that these objectives, and not the amendment or reform of the apartheid system, should be the goals of the negotiations.

3. We are at one with the people of South Africa that the outcome of such a process should be a new constitutional order determined by them and based on the Charter of the United Nations and the Universal Declaration of Human Rights. We therefore hold the following fundamental principles to be of importance:

a) South Africa shall become a united, non-racial and democratic State;

b) All its people shall enjoy common and equal citizenship and nationality, regardless of race, colour, sex or creed;

c) All its people shall have the right to participate in the government and administration of the country on the basis of universal, equal suffrage, under a non-racial voters' roll, and by secret ballot, in a united and non-fragmented South Africa;

d) All shall have the right to form and join any political party of their choice, provided that this is not in furtherance of racism;

e) All shall enjoy universally recognized human rights, freedoms and civil liberties, protected under an entrenched bill of rights;

f) South Africa shall have a legal system that will guarantee equality of all before the law;

g) South Africa shall have an independent and non-racial judiciary;

h) There shall be created an economic order that will promote and advance the well-being of all South Africans;

i) A democratic South Africa shall respect the rights, sovereignty and territorial integrity of all countries and pursue a policy of peace, friendship and mutually beneficial co-operation with all peoples.

4. We believe that acceptance of these fundamental principles could constitute the basis for an internationally acceptable solution that will enable South Africa to take its rightful place as an equal partner among the world community of nations.

A) CLIMATE OF NEGOTIATIONS

5. We believe that it is essential that the necessary climate be created for negotiations. There is an urgent need to respond positively to this universally acclaimed demand and thus create this climate.

6. Accordingly, the present South African regime should, at the least:

a) Release all political prisoners and detainees unconditionally and refrain from imposing any restrictions on them;

b) Lift all bans and restrictions on all proscribed and restricted organizations and persons;

c) Remove all troops from the townships;

d) End the state of emergency and repeal all legislation, such as the Internal Security Act, designed to circumscribe political activity;

e) Cease all political trials and political executions.

7. These measures would help create the necessary climate in which free political discussion can take place—an essential condition to ensure that the people themselves participate in the process of remaking their country.

B) GUIDELINES TO THE PROCESS OF NEGOTIATIONS

8. We are of the view that the parties concerned should, in the context of the necessary climate, negotiate the future of their country and its people in good faith and in an atmosphere which, by mutual agreement between the liberation movements and the South African regime, would be free of violence. The process could commence along the following guidelines:

a) Agreement on the mechanism for the drawing up of a new constitution, based on, among others, the principles enunciated above, and the basis for its adoption;

b) Agreement on the role to be played by the international community in ensuring a successful transition to a democratic order;

c) Agreed transitional arrangements and modalities for the process of the drawing up and adoption of a new constitution, and for the transition to a democratic order, including the holding of elections.

C) PROGRAMME OF ACTION

9. In pursuance of the objectives stated in this Declaration, we hereby decide:

a) To remain seized of the issue of a political resolution of the South African question;

b) To step up all-round support for the opponents of apartheid and to campaign internationally in pursuance of this objective;

c) To use concerted and effective measures, including the full observance by all countries of the mandatory arms embargo, aimed at applying pressure to ensure a speedy end to apartheid;

d) To ensure that the international community does not relax existing measures aimed at encouraging the South African regime to eradicate apartheid until there is clear evidence of profound and irreversible changes, bearing in mind the objectives of this Declaration;

e) To render all possible assistance to the front-line and neighbouring States to enable them: to rebuild their economies, which have been adversely affected by South Africa's acts of aggression and destabilization; to withstand any further such acts; and to continue to support the peoples of Namibia and South Africa;

f) To extend such assistance to the Governments of Angola and Mozambique as they may request in order to secure peace for their peoples, and to encourage and support peace initiatives undertaken by the Governments of Angola and Mozambique aimed at bringing about peace and normalization of life in their countries;

g) The new South Africa shall, upon adoption of the new constitution, participate fully in relevant organs and specialized agencies of the United Nations.

10. We request the Secretary-General to transmit copies of the present Declaration to the South African Government and the representatives of the oppressed people of South Africa and also request the Secretary-General to prepare a report and submit it to the General Assembly by 1 July 1990 on the progress made in the implementation of the present Declaration.

ANNEX

RESOLUTION 44/244*

POLICIES OF APARTHEID OF THE GOVERNMENT OF SOUTH AFRICA

The General Assembly,

Recalling the Declaration on Apartheid and its Destructive Consequences in Southern Africa,[1] adopted by consensus on 14 December 1989[2] at the sixteenth special session of the General Assembly,

Bearing in mind that the Declaration called upon the South African regime, *inter alia*, to undertake certain measures in order to create a climate suitable for negotiations in South Africa,

Recalling that the Declaration called upon the international community not to relax existing measures aimed at encouraging the South African regime to eradicate apartheid until there is clear evidence of profound and irreversible changes, bearing in mind the objectives of the Declaration,

Noting that the States Members of the United Nations and the members of the international community have generally adhered to the programme of action contained in the Declaration[1] and expressing its concern over any departures that have occurred from the international consensus reflected in the Declaration,

Taking careful note of the report of the Secretary-General on the progress made in the implementation of the Declaration[3] and welcoming his contributions,

Taking note of the report of the Monitoring Group of the Ad Hoc Committee on Southern Africa of the Organization of African Unity,[4]

Taking note also of other statements and reports from Member States and regional groups on this issue,

Noting that while some significant measures in the right direction have been undertaken by the South African regime, such as the unbanning of the African National Congress of South Africa, the Pan Africanist Congress of Azania and other political organizations and the release of some political prisoners, including Nelson Mandela, and the regime's declared commitment to abolish the apartheid system, continued efforts are needed to establish a climate fully conducive to negotiations and free political activity,

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*** Resolution adopted by the General Assembly (without reference to a Main Committee (A/44/L.68)).**

Welcoming the ongoing talks between the African National Congress of South Africa and the South African regime aimed at eliminating obstacles to the commencement of negotiations towards a peaceful settlement in South Africa, and the results achieved thus far as set out in the Groote Schuur Minute of 4 May 1990[1] and the Pretoria Minute of 6 August 1990,

Gravely concerned with the escalating violence in South Africa resulting largely from continued existence of the apartheid policies, practices and structures, and actions of those opposed to the democratic transformation of South Africa,

1. ***Reaffirms*** the provisions of the Declaration on Apartheid and its Destructive Consequences in Southern Africa and the need for their full and immediate implementation;

2. ***Determines*** that further steps need to be undertaken by the South African regime to implement the profound and irreversible changes called for in the Declaration;

3. ***Calls upon*** all Governments and intergovernmental organizations to adhere strictly to the programme of action contained in the Declaration[2] by maintaining existing measures aimed at encouraging the South African regime to eradicate apartheid until there is clear evidence of profound and irreversible changes, bearing in mind the objectives of the Declaration;

4. ***Calls upon*** the South African regime to proceed without delay to establish a climate fully conducive to negotiations by taking all the steps stipulated in the Declaration, in particular, to implement its commitment to repeal all legislation, such as the Internal Security Act, designed to circumscribe political activity;

5. ***Calls*** for an immediate end to violence and urges the South African authorities to take urgent action to end it, specifically by dismantling the apartheid structures as well as ensuring effective and impartial action by the security forces, and calls upon all parties concerned to contribute to the establishment of a climate free of violence;

6. ***Welcomes*** the fact that the African National Congress of South Africa and the South African regime have engaged in talks which have thus far resulted in the Groote Schuur and the Pretoria minutes aimed at facilitating the commencement of substantive negotiations;

7. ***Commends*** the African National Congress of South Africa for having taken the initiative in calling for talks with the South African regime and for its landmark decision to suspend the armed struggle;

8. ***Urges*** the international community and the Secretary-General, through the relevant United Nations agencies, to provide all possible assistance to facilitate the re-establishment of previously banned political organizations in South Africa as well as the reintegration of released political prisoners;

9. ***Requests*** the Secretary-General, through the relevant United Nations agencies, to provide all necessary assistance for the voluntary repatriation of the South African refugees and political exiles in safety and dignity, and requests the South African regime, the liberation movements and other organizations in South Africa and the international community to extend their full support to this endeavour;

10. Also requests the Secretary-General to remain actively seized of developments in South Africa and to submit by 30 June 1991 to the forty-fifth session of the General Assembly a report on further progress in the implementation of the Declaration.

100th plenary meeting
17 September 1990

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[1]Resolution S-16/1, annex.

[2]Ibid., sect. C.

[3]A/44/960 and Add.1-3.

[4]A/44/963.

[5]A/45/268, annex.

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